

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
FENTRON INDUSTRIES, INC.)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 425

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being the appeal of a \$250.00 civil penalty for an alleged violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 6th day of December, 1973, at Seattle, Washington; and appellant Fentron Industries, Inc. appearing through its production manager, Robert Rodwell and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin; and Board members present at the hearing being Walt Woodward, presiding, and Mary Ellen McCaffree; and the Board having considered the sworn testimony, exhibits, records

1 and files herein and having entered on the 7th day of December, 1973,
2 its proposed Findings of Fact, Conclusions of Law and Order; and the
3 Board having served said proposed Findings, Conclusions and Order upon
4 all parties herein by certified mail, return receipt requested and
5 twenty days having elapsed from said service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the
8 premises; now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 7th day of
11 December, 1973, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Levy, Washington, this 11th day of
15 January, 1974.

16 POLLUTION CONTROL HEARINGS BOARD

17 Walt Woodward
18 WALT WOODWARD, Chairman

19 Mary Ellen McCaffree
20 MARY ELLEN MCCAFFREE, Member
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Mr. Keith D. McGoffin
Burkey, Marsico, Roval
& McGoffin
818 South Yakima Avenue
Tacoma, Washington 98405

Mr. Robert C. Kelley
Oseran, Hahn & Kelley, P.S.
Suite 202, Business Center Building
777-106th Avenue Northeast
Bellevue, Washington 98004

Puget Sound Air Pollution
Control Agency
410 West Harrison Street
Seattle, Washington 98119

Fentron Industries, Inc.
2801 Northwest Market Street
Seattle, Washington 98107

the foregoing being the last known post office addresses of the above-named parties. I further certify that proper postage had been affixed to the envelopes deposited in the U.S. mail.

Larene C. Barlin
LARENE C. BARLIN
POLLUTION CONTROL HEARINGS BOARD

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PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
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Respondent.)

PCHB No. 425

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a \$250.00 civil penalty for an alleged violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Mary Ellen McCaffree) at a formal hearing in Washington Commerce Building, Seattle, at 9:30 a.m., December 6, 1973.

Appellant was represented by its production manager, Robert Rodwell. Respondent appeared through Keith D. McGoffin. Ernie Yamaguchi, Seattle court reporter, reported the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

EXHIBIT A

1 From testimony heard and exhibits considered, the Pollution Control
2 Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 On May 31, 1973, and June 5, 1973, white smoke of an opacity
6 greater than 40 percent was emitted for periods in excess of three
7 minutes in one-hour periods from a furnace stack of appellant's plant
8 at 2801 N.W. Market Street, Seattle, King County. Both emissions were
9 observed by inspectors on respondent's staff.

10 Appellant paid the \$100.00 civil penalty levied in the May 31,
11 1973 incident.

12 In the June 5, 1973 incident, appellant was served with
13 Notice of Violation No. 6795, citing Section 9.03 of respondent's
14 Regulation I, and Notice of Civil Penalty No. 956 in the amount of
15 \$250.00, which is the subject of this appeal.

16 II.

17 Section 9.03 of respondent's Regulation I makes it unlawful to
18 cause or allow the emission of an air contaminant of greater opacity
19 than 40 percent for more than three minutes in any one-hour period.
20 Section 3.29 of respondent's Regulation I authorizes respondent to
21 levy a civil penalty of not more than \$250.00 for a violation of
22 respondent's Regulation I.

23 III.

24 Notice of Violation No. 8214, issued in the May 31, 1973 incident,
25 was interpreted by appellant to mean that it had ten days in which
26 to take corrective action despite the fact that said notice bore a

27 FINDINGS OF FACT,

CONCLUSIONS AND ORDER

1 stamped warning that the notice "may be subject to . . . other
2 enforcement action."

3 IV.

4 Subsequent to the June 5, 1973 incident, appellant found that
5 sawdust, mixed with aluminum scrap for remelting, caused the white
6 smoke. Appellant thereupon instituted a program of aluminum scrap
7 inspection. Any scrap found to be contaminated with a smoke-causing
8 substance is sold for scrap and is not remelted by appellant. Appellant's
9 employees have been warned by appellant that disregard of the above-
10 described procedure will result in furlough without pay.

11 V.

12 The above-described procedure is costing appellant about \$600.00
13 a month in the purchase of aluminum to replace contaminated aluminum
14 which is sold for scrap.

15 From these findings, the Pollution Control Hearings Board comes
16 to these

17 CONCLUSIONS

18 I.

19 Appellant was in violation of Section 9.03 of respondent's
20 Regulation I, on June 5, 1973, as cited in Notice of Violation No. 6795.

21 II.

22 The violation of May 31, 1973, is justification for the imposition
23 by respondent of the maximum allowable amount of \$250.00 in the civil
24 penalty imposed for the June 5, 1973 violation. However, this Board
25 takes the position that when a violator takes positive steps to be
26 in compliance, penalty mitigation is in order. In this matter,
27 appellant, at a monthly cost of \$600.00, apparently is achieving

FINDINGS OF FACT,

CONCLUSIONS AND ORDER

1 compliance with clean-air regulations.

2 Therefore, the Pollution Control Hearings Board issues this

3 ORDER

4 The appeal is denied as to Notice of Violation No. 6795, but
5 Notice of Civil Penalty No. 956 is remanded to respondent for
6 immediate collection of \$50.00, the balance of \$200.00 to be
7 suspended pending no similar violation for a period of six months
8 from the date this order becomes final.

9 DONE at Lacey, Washington, this 7th day of December, 1973.

10 POLLUTION CONTROL HEARINGS BOARD

11 Walt Woodward
12 WALT WOODWARD, Chairman

13 Mary Ellen McCaffree
14 MARY ELLEN McCAFFREE, Member

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26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER